

REMARKS

This Amendment is in response to the Official Action mailed July 27, 2006, and is being submitted subsequent to an After Final Amendment mailed on December 18, 2006. Because the After Final Amendment was not entered by the Examiner, the above amendments to the currently pending claims have been tracked from the last entered response in the matter. In addition, because the July 27, 2006 Action was indeed a Final Official Action, the present Amendment is being submitted along with a Request for Continued Examination ("RCE"). Claims 21-24, 27, 33-35, 43, 44, 49, and 50 have been amended, claims 26, 30, 31, 39, 45, and 51 have been cancelled, and claim 38 had been previously cancelled. Thus, claims 21-25, 27-29, 32-37, 40-44, 46-50 and 52 remain currently pending in the present case. The following sets forth the Applicant's remarks.

As an initial matter, Applicant respectfully thanks the Examiner for taking the time to perform at least a cursory review of the After Final Amendment submitted on December 18, 2006. Because the Examiner indicated in the telephone with Applicant's undersigned counsel that she would not be willing to enter the aforementioned After Final Amendment, the present response is being submitted with both further clarification amendments to the currently pending claims and an RCE. This should allow the Examiner ample time to conduct a full review of the currently pending claims without having to do so under the guise of a Final Action. Applicant respectfully submits that each and every one of the objections and rejections set forth in the July 27<sup>th</sup> Action are addressed in the present response, and in fact, certain sections from the non-entered After Final Amendment are re-printed verbatim below.

In the Official Action, the Examiner first objected to the drawings under 37 C.F.R. § 1.83(a) for failing to show every feature of the invention specified in the claims. Specifically,

the Examiner mentioned that the means for controlling the speed of each unit, the conveyor means, a transport device, and a shifting device being arranged for guiding at least two units simultaneously must be shown in the drawings or the features cancelled from the claim. Likewise, the Examiner mentioned Applicant's amendment to the specification set forth in an April 4, 2006 Amendment, which included reference to conveyor means 12. However, the Examiner noted that the conveyor means 12 in the replacement drawing of FIG. 4 references the shifting unit 6, and no further description within the specification clarifies exactly to what structure conveyor means 12 refers. The Examiner requires further clarification or correction in the present Amendment.

In response, Applicant notes that the means for controlling the speed of each unit has been further clarified through the amendments to independent claims 21 and 33. It is made clear in such claims that the speed of the units is controlled through acceleration of the units upon entering the shifting device. For example, the conveyor means 12 of shifting unit or device 6 may operate at twice the speed of similar conveyor means of the incoming feeder track, thereby pulling the units. This pulling means that the length of the unit provides a gap between it and the next unit in line. As such, the first product moves forward at a greater speed and becomes separated from the next product in line. This allows for the proper spacing of the products required in shifting same and in counting same (discussed below). In addition, Applicant notes that conveyor means and transport device may in fact mean the same thing, but simply utilize different terminology in order to fully capture different iterations described in the specification of the present application. In fact, even further amendments to independent claims 21 and 33 have been set forth herein, to make it clear that both the incoming feeder track and

the shifting device include first and second transport devices, respectively. These transport devices are generally powered sections which provide the necessary movement to the units in the system. Finally, Applicant notes that it is clear not only from the specification, but also the drawings, that the shifting device may be arranged for guiding at least two units simultaneously. In this regard, it is noted that two units may be disposed on the shifting device at any time. Thus, this objection seems unfounded.

With regard to the objections of the specification, Applicant is perplexed by the Examiner's note of the conveyor means 12 being unclear. In connection with the present invention, conveyor means 12 may be present on both the incoming and outgoing feeder tracks, as well as the shifting device. These means are, in fact, what propels the individual units. The recitation of such as means is simply designed to cover the many different types of conveyors and/or transport devices capable of being utilized in connection with the present invention.

As such, Applicant respectfully requests that each of the above objections be removed.

Further in the Official Action, the Examiner has rejected claims 21-29, 31-37, and 39-52 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, the Examiner notes lines 11-15 of claim 21, which recites "wherein said control device is arranged for speed control of said shifting device so as to accelerate said units in said shifting device, thereby providing separation of said units with respect to one another in a longitudinal directional flow." In the Examiner's opinion, this recitation implies that either the shifting device varies in speed or the shifting device affects

the speed of the unit. However, the Examiner also notes that it appears that neither of these two functions is being performed by the shifting device, and therefore this claim limitation is deemed to be vague and indefinite. The Examiner further notes that dependent claim 36 recites "said shifting device is arranged for constant speed." In the Examiner's opinion, this is contrary to the recitation of claim 21.

In the present response, Applicant has submitted significant amendments to independent claims 21 and 33, in order to further clarify specifically what Applicant considers the present invention to be, as well as to clear up any misconceptions regarding same. We understood that the aforementioned separation of the units with respect to one another is actually performed by varying the speed of flow on the shifting device with respect to that of the incoming feeder track. More particularly, the units are generally presented by the incoming feeder track at a first speed, and then accelerated by the second transport device of the shifting device, which is operating at a second speed greater than the first speed. Applicant recognizes that certain of the previously submitted amendments may have been confusing in this regard, and has amended independent claims 21 and 33 to require that the units are presented to the shifting device from the first transport device of the incoming feeder track at a predetermined speed and, thereafter, accelerated when they enter the second transport device of the shifting device. In accordance with these amendments, claims 26, 45, and 51 have been cancelled and claims 27 and 35 have been amended. Applicant respectfully submits that such amendments now clear up any misconceptions previously harbored by the Examiner, and respectfully requests the removal of the 112 rejections regarding same.

In addition, Applicant has amended independent claim 33 and dependent claim 22 to remove "the properties" limitation

and notes that with regard to the 112 rejection of claim 33, the means for controlling the speed of each unit are in fact located in the shifting device, as such shifting device is operated at a second speed greater than that of the incoming feeder track.

In the Official Action, the Examiner rejected claims 21-29, 31-37, and 39-52 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,186,306 to Sjostrand ("Sjostrand") in view of U.S. Patent No. 6,076,683 to Okada et al. ("Okada") and in view of U.S. Patent No. 5,439,094 to Hakansson ("Hakansson"). Essentially, it is the Examiner's opinion that Sjostrand discloses each and every one of the limitations of independent claims 21 and 33, but fails to explicitly disclose each unit being accelerated along the shifting device to a speed exceeding the speed of the flow from the incoming feeder track, thereby providing separation of the units with respect to one another in a longitudinal direction of flow, while each unit is guided to a selective path of the outgoing feeder track. However, the Examiner cites Okada as disclosing a second downstream conveyor 5 traveling faster than the first upstream conveyor 4. As such, the Examiner notes that it would have been obvious to one of ordinary skill in the art at the time of the present invention to replace Sjostrand's incoming feeder conveyors 3 and 4 with that of Okada's conveyors 4 and 5, thereby creating the acceleration of the units along the shifting device to a speed exceeding the speed of the flow from the incoming feeder track in order to provide for the time conveyance of smaller, lighter articles. In addition, the Examiner notes that Sjostrand also fails to explicitly disclose a plurality of horizontally spaced, parallel, selectable paths within the outgoing feeder track. In order to support the finding of this limitation, the Examiner cites Hakansson as disclosing a plurality of horizontally spaced, parallel, selectable paths within the outgoing feeder track (reference 11

in FIG. 4). Thus, it is also the Examiner's opinion that it would have been obvious to one of ordinary skill in the art at the time the present invention to replace Sjostrand's outgoing feeder tracks 9 and 19, with that of Hakansson's single outgoing feeder track in order to simplify the construction, thereby having one single outgoing feeder track as opposed to two.

In response, Applicant respectfully points out that Okada teaches a very different configuration than that of the present invention, and to that of Sjostrand for that matter. Specifically, Okada teaches a single conveyor system in which packages are ultimately directed to different branch lines through the use of diverters 20. In both the present invention and that of Sjostrand, a single shifting device is utilized, as opposed to the plurality of diverters set forth in Okada. The fact that Okada teaches a conveyor 5, which travels faster than a first conveyor 4 to create a minimum of spacing in between successive articles is moot considering the far different configuration and design of the shifting mechanism of Okada. In fact, Okada is more akin to the previously cited Bonnet reference, which has already been overcome during prosecution of the present matter.

In addition, Applicant is also perplexed by the Examiner's citation of Hakansson in order show a plurality of horizontally spaced, parallel, selectable pass within the outgoing feeder track. However, given the aforementioned amendments of independent claims 21 and 33, Applicant respectfully submits that even the citation of Sjostrand is overcome. Specifically, such claims now have been amended to require that the units are accelerated upon entering the shifting device. This is far different than that taught in Sjostrand, which teaches a belt brake that operates a slower speed than the ingoing conveyor, thereby creating counting gaps. In essence, the acceleration provided by the shifting unit of

the present invention allows for a faster, continuous operation to be performed by the apparatus.

In addition, it is noted that independent claims 21 and 33 have also been amended to require that the shifting device be pivotally arranged about a pivoting axis, and that the separation created for the units not only allow for controlled shifting without arresting of continuous flow, but also allow for counting of the units. The addition of the latter two limitations certainly remove Okada and Hakansson as citable prior art references. As has been discussed in previous responses, the present invention provides for a smaller, faster, and more useful soaring apparatus.

Finally, it is also noted that independent claims 21 and 33, as well as certain dependent claims, have been amended to more clearly set forth the structure of the present invention. In this regard, Applicant points the Examiner to the inclusion of the incoming and outgoing feeder tracks in the body of the independent claims, rather than in the preamble of same. Although of the same scope as previously presented independent claims, this, in Applicant's opinion, makes such claims clearer.

In light of the above, Applicant respectfully submits that currently amended independent claims 21 and 33 overcome the prior art cited in the latest Official Action, as well as all of the art which has been cited to this point. Given the remaining claims properly depend upon either independent claim 21 or independent claim 33, and have themselves been amended to overcome certain objections/rejections set forth by the Examiner in the Official Action, Applicant also respectfully submits that such overcome all the prior art of record. Therefore, in light of all of the above, Applicant respectfully requests allowance of each and every one of the currently pending claims. Accordingly, the Examiner is respectfully requested to withdraw

the outstanding rejections and objections of the claims and pass this application to issue.

Should the Examiner determine for any reason that the present case is not indeed in a condition of allowance, she is requested to contact Applicant's undersigned counsel directly via telephone. As the Examiner indicated in the aforementioned communication held with Applicant's undersigned counsel subsequent to the submission of the After Final Amendment, submitting the present Amendment along with an RCE would open the door for further and more substantive discussions/interviews to be conducted. Applicant feels as though this is very important in having the Examiner understand the difference between the present invention and the prior art cited to this point. Therefore, should this communication not convince the Examiner on its face, it is respectfully requested that she contact Applicant's undersigned counsel prior to issuing a subsequent Official Action.

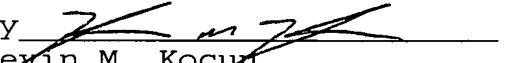
As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone Applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: January 26, 2007

Respectfully submitted,

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